

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
v.	)	
	)	Civ. No. 04-11136-GAO
DIRECT MARKETING CONCEPTS, INC., et al.,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF DEBORAH KELLY  
PURSUANT TO 28 U.S.C. § 1746**

1. My name is Deborah Kelly. I am a citizen of the United States and over twenty-one years of age. I am employed by the Federal Trade Commission (“FTC”) as a Supervisory Investigator in the Division of Advertising Practices of the Bureau of Consumer Protection. My business address is 600 Pennsylvania Ave., N.W., Room NJ-3225, Washington, D.C., 20580.

2. My duties include assisting the attorneys in the Division of Advertising Practices in their investigations of possible violations of the Federal Trade Commission Act. I have personal knowledge of the facts stated herein. If called to testify, I could and would competently testify to the facts set forth below.

3. A true and correct copy of the Flex Protex infomercial, in Windows Media Player format, is located on a data Compact Disc (“CD,”) attached to this Declaration as Attachment 1. A true and correct copy of a transcript of the Flex Protex infomercial is attached to this Declaration as Attachment 2.

4. A true and correct copy of the page from the July 2005 Infomercial Monitoring Service (“IMS”) report indicating that IMS first detected airing of the Flex Protex infomercial on

July 29, 2005, is attached to this Declaration as Attachment 3.

5. Attachment 4 to this Declaration is a true and correct copy of the label of Supreme Greens with MSM.

6. Attachment 5 to this Declaration is a true and correct copy of an April 19, 2004, letter to Mr. Donald W. Barrett, Jr. from Gail T. Costello (Food and Drug Administration, New England District).

7. Attachment 6 to this Declaration contains true and correct copies of: (a) a press release issued by the Electronic Retailing Self-Regulatory Program (“ERSP”) announcing that ERSP had referred the Sea Vegg infomercial to the Federal Trade Commission as a result of noncompliance with ERSP’s previous decision; and (b) ERSP’s report on the Sea Vegg compliance proceeding.

8. According to IMS’s monthly report of the 100 most frequently aired infomercials, the Sea Vegg infomercial was ranked number 11 in July 2005. A true and correct copy of an excerpt from the July 2005 IMS report showing this ranking is included in Attachment 3 to this Declaration.

9. Attachment 7 to this Declaration is a true and correct copy of an August 3, 2005, letter from Michael Sciucco, Esq. to Peter Marinello, Esquire, at the National Advertising Division, the subject of which is “Compliance/Sea Vegg.”

10. Attachment 8 to this Declaration is a true and correct copy of a printout from the website of the Electronic Retailing Association, [www.retailing.org](http://www.retailing.org), which states in part that “Pursuant to ERA’s ERSP policies and procedures, ITV Direct, a member of ERA since June 2003, also has been expelled from ERA’s membership due to noncompliance.”

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the statements made in this Declaration are true and correct.

Executed on August 24, 2005

Deborah Kelly  
Deborah Kelly